

REMARKS

This is in response to the Office Action mailed November 24, 2008.

The Examiner has objected to claims 1, 3 to 10 as being indefinite. Applicant has amended the claims to incorporate the limitations of claim 2 into independent claim 1, and to recite the provider in step (a). Applicant respectfully submits that the claims as amended meet the requirements of 35 U.S.C. § 112. As amended it is clear that the claims steps of claim 1 meet the scope of the preamble. Further, it is clear that neither the operator nor the provider is required to carry out each and every one of the steps and a third party may be involved.

The Examiner has objected to claims 1 to 30 on the basis that the claims are not directed to patentable subject matter. As set out in *In re Bilski*, a method or process must be tied to a particular machine or transforms an article into a different state or thing. As set out in the amended claims, the claims are directed to providing music from a provider of music to an operator (independent claims 1, 11, 19) and in the course of carrying out the method of the claims, rights are transferred from an operator to a provider of music and music is delivered from the provider to the operator. As a result, music which may otherwise be maintained by a provider of music is delivered to an operator for playing in a public medium. Applicant submits that this transformation meets the requirements for patentability required.

The Examiner has objected to claims 1 to 30 on the basis that the claims are anticipated by Wilks. Wilks is directed to an apparatus and method for receiving, storing and playing music.

Wilks does not address, nor teach, the transfer of rights between a provider of music and an operator as required in the amended independent claims. The subject matter of claim 2 has been incorporated into claim 1 and the subject matter of claim 12 incorporated into claim 11. Applicant submits that Wilks does not teach the provider acquiring from the operator a right to play music. In Wilks, the system is disclosed where "the selection by a business owner" [para 8] is taught and the business pays the necessary license fees [para 48].


It is therefore respectfully submitted that the present invention is novel over Wilks.

Favourable consideration and allowance of this application are respectfully requested.

A Petition for an Extension of Time requesting an extension of two months for filing the subject response is attached. The Commissioner is authorized to charge any deficiency or credit any overpayment in the fees for same to our Deposit Account No. 500663.

Executed at Toronto, Ontario, Canada, on April 20, 2009.

Leonard J. Gaik

A handwritten signature in black ink, appearing to read 'Adrian M. Kaplan', is written over a horizontal line.

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